

# COVID-19 Emergency Response and Other Legislation Amendment Bill 2021

## Explanatory Notes

### Short title

The short title of the Bill is the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021.

### Policy objectives and the reasons for them

#### Background

##### Extension of operation of COVID-19 related legislation

The COVID-19 public health emergency declared in January 2020 is ongoing and measures which protect the health, safety and welfare of Queenslanders, mitigate the spread of COVID-19 in the community, and facilitate the continued functioning of Queensland's institutions and economy to the extent possible are still required.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* received assent extending the operation of temporary legislative provisions introduced in 2020 to facilitate Queensland's swift and effective public health response to the COVID-19 public health emergency until 30 September 2021. This includes the extension of emergency powers for the Chief Health Officer to make public health directions to limit or respond to the spread of COVID-19 in Queensland. As at 8 March 2021, there were 19 public health directions in force in Queensland.

In addition to the public health framework, temporary and in some cases extraordinary legislative measures, were introduced by the *COVID-19 Emergency Response Act 2020* (ER Act) and the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Amendment Act) to allow for flexible and rapid responses to a range of things disrupted, caused or affected by the COVID-19 emergency. The majority of these measures were initially to expire on 31 December 2020.

In recognition of the continued uncertainty surrounding the effects of and response to the COVID-19 public health emergency, the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* (Extension Act) was passed in December 2020. The Extension Act extended the impending expiry of measures introduced by the ER Act or the Amendment Act as well as secondary instruments made under those measures, that were still required, to the newly termed 'COVID-19 legislation expiry date'. In the Extension Act, the COVID-19 legislation expiry date was set at 30 April 2021 or an earlier date to be prescribed by regulation. The Extension Act also

introduced a limited number of new measures, including the power to make regulations to facilitate transitional arrangements

Together, the ER Act, Amendment Act, Extension Act, secondary instruments made under or pursuant to these Acts or COVID-19 related regulations or amendments made under regulation-making powers of other Acts (for example, the *Body Corporate and Community Management Act 1997* and *Building Units and Group Titles Act 1980*) that expire on the COVID-19 legislation expiry day are referred to as COVID-19 related legislation.

Since the passage of the Extension Act, in January 2021 significant restrictions were imposed in the Greater Brisbane region in response to the identification of a highly contagious variant of COVID-19 in an individual who had been in the community. These restrictions included a rapidly imposed strict three-day lockdown followed by a period of targeted social distancing and masking requirements. Emergency measures, including short periods of lock-down, have also been rapidly imposed in Western Australia and Victoria in January and February 2021.

On 22 February 2021, the staged rollout of the COVID-19 vaccines commenced in Queensland.

Queensland continues to have an effective public health response to the evolving risks of the COVID-19 emergency. However, the need for a temporary legislative framework to facilitate Queensland's successful functioning while uncertainty surrounding potential outbreaks of COVID-19 and the rapid, unpredictable imposition of restrictions remains.

#### Local governments may make 'extraordinary decisions' for the 2021-22 financial year

In response to the COVID-19 public health emergency, the Amendment Act and the *Local Government Legislation Amendment Regulation (No. 1) 2020* inserted new provisions into the *City of Brisbane Act 2010* (COBA), *Local Government Act 2009* (LGA), *City of Brisbane Regulation 2012* (CBR) and *Local Government Regulation 2012* (LGR) respectively, to provide temporary measures to help safeguard local government revenue streams for the 2020-21 financial year.

The measures allow local governments to decide by resolution, outside of the annual budget meeting, what rates and charges are to be levied for the remainder of the 2020-21 financial year by making an 'extraordinary decision'. For example, if a local government adopted its budget in July 2020, the local government could then make an extraordinary decision/s to re-levy rates and charges for the remainder of the 2020-21 financial year with the new rate applying no earlier than the day the resolution is made. Further, if an extraordinary decision is made, the local government must amend the annual budget at the same meeting to take account of the extraordinary decision and must adopt the amended annual budget.

These measures were adopted only in relation to the 2020-21 financial year and expire on 30 June 2021.

Due to local governments' limited sources of revenue, the measures remain necessary to ensure the ability to be responsive to any future economic impacts on their operations and financial sustainability as a result of the ongoing COVID-19 public health emergency. Accordingly, the Bill amends the COBA and the LGA to provide the necessary authority for local governments to make extraordinary decisions during the 2021-22 financial year, should it be necessary. The proposed authority is consistent with that provided to local governments for the 2020-21 financial year by way of a regulation-making power and regulation.

Flexibility to facilitate the holding of COVID-safe local government by-elections and fresh elections

The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* inserted new provisions into the COBA, the LGA and the *Local Government Electoral Act 2011* (LGEA) to provide flexibility, if required, for the election date for the 2020 quadrennial local government election and statutory processes for the conduct of the election, to help minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. In support, the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* provided for matters to allow or facilitate the holding of the quadrennial election, including Electoral Commission Queensland (ECQ) directions to candidates and scrutineers to regulate numbers and movement and the filming of vote counting.

However, these arrangements do not apply to local government by-elections or fresh elections. Accordingly, the Bill amends the COBA, the LGA and the LGEA to provide flexibility, if required, to facilitate the holding of a local government by-election or fresh election in a way that minimises serious risks to the health and safety of persons caused by the COVID-19 public health emergency. The Bill also amends the *State Penalties Enforcement Regulation 2014* (SPER) to prescribe proposed offences as infringement notice offences.

The amendments are temporary in nature and align where appropriate with recent amendments to the *Electoral Act 1992* for State by-elections in response to the COVID-19 public health emergency.

Extension of operation of COVID-related local government meeting provisions

Chapter 8, part 2A of the CBR and chapter 8, part 2, division 4 of the LGR provide temporary additional provisions in relation to local government and committee meetings to help minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. These provisions allow meetings to be held by audio link or audio visual link, participation of persons in meetings by audio/audio visual link and meetings to be closed to the public for health and safety reasons associated with COVID-19, and require real-time public viewing or listening of meetings where audio/audio visual link is used.

The provisions which expire on 30 June 2021 do not disapply any regular local government and committee meeting requirements under the CBR or the LGR.

To ensure continued flexibility for local governments in addressing the ongoing COVID-19 public health emergency, the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021 (the Bill) amends the CBR and the LGR to extend the operation of these provisions until the proposed new COVID-19 legislation expiry day.

### **Summary of the Bill**

The objectives of the Bill are to:

- extend the operation of all COVID-19 related legislation which is still required to respond to the impacts of the COVID-19 public health emergency until 30 September 2021 or an earlier date to be prescribed by regulation;
- continue to support the financial sustainability of local governments during the COVID-19 public health emergency by allowing local governments to decide, by resolution at a meeting other than a budget meeting, what rates and charges are to be levied for the 2021-22 financial year;
- provide flexibility, if required, to facilitate the holding of local government by-elections and fresh elections in a way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency; and
- extend the operation of temporary local government and committee meeting provisions to ensure continued flexibility for local governments in addressing the COVID-19 public health emergency.

### **Achievement of policy objectives**

#### Extension of operation of COVID-19 related legislation

The Bill extends the operation of COVID-19 related legislation still required to respond to the impacts of the COVID-19 public health emergency to 30 September 2021, or an earlier date prescribed by regulation, by amending the definition of COVID-19 legislation expiry day in the ER Act.

This amendment will extend the operation of regulation making powers under the ER Act related to residential tenancies and retail and other relevant leases, as well as the legislative modification framework of general application across the statute book (the modification framework) which provides for the making of secondary instruments under the following broad global heads of power:

- reducing physical contact between persons;
- statutory timeframes; and
- proceedings of courts/tribunals.

The following secondary instruments, or aspects of them, enacted pursuant to powers under the ER Act (and other Acts) will also be extended:

- *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- *Education Legislation (COVID-19 Emergency Response) Regulation 2020*

- *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*
- *Health Legislation (COVID-19 Emergency Response) Regulation 2020*
- *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020* (including amendments contained in this Regulation made under the *Body Corporate and Community Management Act 1997* and the *Building Units and Group Titles Act 1980*)
- *Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020*
- *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
- *Local Government (COVID-19 Emergency Response) Regulation 2020*
- *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
- *Planning (COVID-19 Emergency Response) Regulation 2020*
- *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
- *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*
- *Youth Justice (COVID-19 Emergency Response) Regulation 2020.*

The operation of the amendments made to the following legislation by the Amendment Act and Extension Act will also be extended:

- *Body Corporate and Community Management Act 1997*, chapter 7, part 3 and chapter 8, part 14
- *Building Units and Group Titles Act 1980*, part 6A and part 7, division 3
- *Casino Control Act 1982*, section 57A
- *Corrective Services Act 2006*, chapter 6, part 15A
- *Disaster Management Act 2003*, part 12A
- *Electoral Act 1992*, part 12C
- *Environmental Protection Act 1994*, chapter 11A
- *Gaming Machine Act 1991*, part 11A
- *Keno Act 1996*, section 116A
- *Liquor Act 1992* part 10A
- *Lotteries Act 1997*, section 99A
- *Manufactured Homes (Residential Parks) Act 2003*, section 146A
- *Youth Justice Act 1992*, section 264A

The amendments to the following secondary instruments made by the Extension Act will also be extended:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2020*
- *Body Corporate and Community Management (Commercial Module) Regulation 2020*
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2020*

- *Body Corporate and Community Management (Standard Module) Regulation 2020*

The life of *Gaming Tax Notice 2020* and *Gaming Tax Notice (No. 2) 2020* will also be extended.

The Bill also:

- ensures that, consistent with the existing approach in the modification framework, the power to make a regulation under the ER Act to facilitate the transition from the law as modified by the COVID-19 related legislation to the law following expiry of the COVID-19 related legislation can be exercised by the Minister responsible for administering the relevant law;
- amends the *Justice Legislation (COVID-19 Emergency Response – Proceedings and Other Matters) Regulation 2020* to remove modifications to the *Coroners Act 2003* that extended the period for providing the annual report of the Domestic and Family Violence Death Review Advisory Board; and
- makes consequential amendments to complementary provisions of COVID-19 related legislation and minor or technical amendments.

#### Local governments may make ‘extraordinary decisions’ for the 2021-22 financial year

The Bill achieves the policy objective by amending the COBA and the LGA to:

- enable a local government to decide, by resolution made other than at the budget meeting for the 2021-22 financial year, what rates and charges are to be levied for the period of the financial year starting on a day not earlier than the day the resolution is made and ending on 30 June 2022 (an ‘extraordinary decision’);
- provide that the annual budget must be amended at the meeting at which the extraordinary decision is made and that the amended budget must be adopted;
- provide that the amended budget must comply with the requirements prescribed by regulation for preparing an annual budget and be consistent with the local government’s extraordinary decision; and
- provide for minor technical amendments.

#### Flexibility to facilitate the holding of COVID-safe local government by-elections and fresh elections

The policy objective is achieved by inserting new part 9B into the LGEA which will apply to a by-election for which the notice of election is published on or before the COVID-19 legislation expiry day or to a fresh election if a regulation that provides for the election to be held is made on or before the COVID-19 legislation expiry day. The purpose of the new part is to facilitate the holding of an election to which the part applies in a timely way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency. The Bill also makes a minor technical amendment to section 18 of the LGEA (When voters roll must be compiled).

New part 9B includes provisions which:

- provide greater flexibility around the cut-off day for compiling voters’ rolls, calling for the nomination of candidates and applying for postal votes;
- provide for a poll to be adjourned to a day not more than two months after the original polling day;

- enable the Minister to postpone the election if the poll is to be delayed for more than two months after the original polling day;
- enable the Minister to direct that a poll be conducted by postal ballot;
- enable the ECQ to declare that a stated class of electors may cast a postal vote without applying to do so;
- provide greater flexibility around electronically assisted voting and electoral visitor voting;
- enable the ECQ to give directions about the distribution or display of how-to-vote cards and other election material at polling booths;
- enable the ECQ to give directions to scrutineers and/or candidates about their movement at particular places and the number of scrutineers each candidate is allowed;
- allow the counting of votes to be filmed and directions to be given about where the counting of votes is to take place; and
- allow the making of regulations under the LGEA, if necessary, about matters to facilitate the holding of a by-election or a fresh election in a timely way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

The Bill also provides a transitional provision which continues the application of new part 9B, after it expires, to elections initiated before or after commencement, if immediately before the expiry of part 9B, anything required or permitted to be done under the LGEA in relation to the election has not been done.

The Bill also amends the COBA and the LGA to provide flexibility in filling the vacant office of a councillor (including a mayor), if required, to account for a delay in holding a by-election or fresh election because of the COVID-19 public health emergency. The Minister may give a direction to a local government about whether or not the vacant office must be filled and may also extend the period within which the local government must fill the vacant office.

Further, the Bill provides that a regulation may make provision about a matter if the COBA or the LGA does not make provision or sufficient provision about the matter in relation to an election to which new part 9B of the LGEA applies.

In addition, the Bill amends the SPER to allow penalty infringement notices to be issued for contravening directions about the distribution or display of how-to-vote cards or other election material at a polling booth, the number of scrutineers each candidate may have for a by-election or fresh election, and the movement of scrutineers and candidates at a polling booth or other place they are entitled to be present.

#### Extension of operation of COVID-related local government meeting provisions

The policy objective is achieved by inserting a new expiry date of ‘COVID-19 legislation expiry day’ in the section 255G of the CBR and section 277F of the LGR.

This will enable local government and committee meetings to be held by audio/audio visual link and to be closed to the public for health and safety reasons associated with COVID-19, should it be required.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives.

## **Estimated cost for government implementation**

While the amendments to the COBA and the LGA to allow extraordinary decisions during the 2021-22 financial year are an important measure to support the financial sustainability of local governments, they do not present additional costs for State government implementation.

There are no other significant costs for implementation of the amendments. Any costs will be met from within existing budget allocations.

## **Consistency with fundamental legislative principles**

### Further extension of operation of COVID-19 related legislation

The most significant potential breach of the fundamental legislative principles relates to the nature of the powers extended by the Bill (in particular, the modification framework) to the extent that it may not have sufficient regard to the institution of Parliament (section 4(2)(b) *Legislative Standards Act 1992* (Legislative Standards Act)) or the rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act).

### ***Institution of Parliament***

The Bill extends the operation of the regulation-making powers and the modification framework under the ER Act to 30 September 2021 or an earlier date prescribed by regulation. This extension continues the ability for various Acts to be modified by subordinate legislation, should that be required. The use of secondary instruments to implement the modification framework ('Henry VIII clauses') represents a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to the institution of Parliament (section 4(2)(b) Legislative Standards Act).

The resulting amendments which may be facilitated by the modification framework will impact on fundamental legislative principles in different ways, but broadly represent a further potential departure in the sense that amendments may:

- allow the delegation of legislative power in cases, and to persons, that may not ordinarily be considered to be appropriate (section 4(4)(a) Legislative Standards Act); and
- subject the exercise of a delegated legislative power to what may ordinarily be considered to be insufficient scrutiny by the Legislative Assembly (section 4(4)(b) Legislative Standards Act).

### ***Rights and liberties of individuals***

The extension of the operation of the modification framework also represents a potential departure from the fundamental legislative principle requiring that legislation has sufficient regard to rights and liberties of individuals (section 4(2)(a) of the Legislative Standards Act) in the sense that future amendments may:

- make rights and liberties, or obligations, dependent on administrative power in circumstances where the power may not ordinarily be considered to be sufficiently defined or subject to appropriate review (section 4(3)(a) Legislative Standards Act);
- not be consistent with principles of natural justice, and in particular the right to be heard and the right to procedural fairness (section 4(3)(b) Legislative Standards Act);
- allow the delegation of administrative power in cases, and to persons, that may not be considered appropriate (section 4(3)(c) Legislative Standards Act), were it not for the current public health emergency in Queensland; and
- adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g) Legislative Standards Act).

***Consistency of subordinate legislation made under or pursuant to the ER Act***

The Bill extends the operation of 16 principal regulations which have been made to date under or pursuant to powers provided for in the ER Act. Four of these regulations have been further amended. The extent to which these regulations impact on fundamental legislative principles is addressed in the Explanatory Notes accompanying each legislative instrument (the list below includes both the principal and amendment regulations).

- [Explanatory Note](#) – *Corrective Services (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Economic Development (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Education Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Explosives Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Health Legislation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Community Titles Schemes and Other Matters) Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Wills and Enduring Documents) Amendment Regulation 2020*
- [Explanatory Note](#) – *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020*
- [Explanatory Note](#) – *Local Government (COVID-19 Emergency Response) Regulation 2020*

- [Explanatory Note](#) – *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Planning (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Planning Legislation (Economic Recovery Measures and Other Matters) Amendment Regulation 2020*
- [Explanatory Note](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020*
- [Explanatory Note](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020*
- [Explanatory Note](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2020*
- [Explanatory Note](#) – *Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021*
- [Explanatory Note](#) – *Youth Justice (COVID-19 Emergency Response) Regulation 2020*

While the Bill extends the operation of the regulation-making powers and the modification framework, it is not reasonably foreseeable that further subordinate legislation will be made under or pursuant to the powers provided for under the ER Act that will radically depart from the types of instruments that have already been made.

Therefore, should the need arise for further secondary instruments to be enacted, any potential inconsistency with fundamental legislative principles will be canvassed in the Explanatory Notes accompanying the secondary instrument.

The Bill also extends the safeguard measures which accompany the regulation-making powers and the modification framework. This includes that any retrospective application is limited in nature, and that no regulations or statutory instruments enacted under the ER Act are able to be exercised so as to amend or override the *Human Rights Act 2019* (Human Rights Act), or any particular provision of the Human Rights Act, thereby preserving its important human rights protections.

### ***Consistency of Acts amended by the Amendment Act and Extension Act***

Although Queensland's response to the COVID-19 public health emergency has been swift and effective, the COVID-19 public health emergency continues to present an extraordinary and unprecedented situation that requires a continued and measured response.

The Bill also extends the operation of Acts which were amended as part of the Amendment Act and Extension Act. The consistency with fundamental legislative principles of amendments to legislation made under the Amendment Act and Extension Act were addressed in the [Explanatory Notes](#) to the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Bill 2020 and the [Explanatory Notes](#) to the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020.

In addition, as a result of this extension, the life of the *Gaming Tax Notice 2020* and the *Gaming Tax Notice (No. 2) 2020* will also be extended. The extent to which these

notices impact on fundamental legislative principles is addressed in the Explanatory Notes accompanying each legislative instrument:

- [Explanatory Note](#) – *Gaming Tax Notice 2020*
- [Explanatory Note](#) – *Gaming Tax Notice (No. 2) 2020*
- [Explanatory Note](#) – *Gaming Tax Amendment Notice 2020*

#### Application of transitional regulation making power

The ER Act includes a transitional regulation making power enabling a regulation to be made, where necessary, to facilitate the return to normal operations in the most effective and efficient way once any COVID-19 law is no longer needed.

The Bill allows the transitional regulation making power to be exercised by the Minister responsible for administering the substantive law affected by the COVID-19 related legislation.

Expanding the application of the transitional regulation making power may be considered a breach of the fundamental legislative principle under section 4(2)(b) of the Legislative Standards Act, that legislation should have sufficient regard to the institution of Parliament.

This potential breach is justified as it ensures the power can be exercised by the Minister best able to identify the need for a regulation within the limited scope of the power. Existing limitations and safeguards on the transitional regulation-making power, as addressed in the [Explanatory Notes](#) to the Extension Act, will continue to apply.

#### Local governments may make ‘extraordinary decisions’ for the 2021-22 financial year

##### ***Rights and liberties***

The proposal to amend the COBA and the LGA to enable local governments to make extraordinary decisions during the 2021-22 financial year potentially impacts the fundamental legislative principle in section 4(2)(a) of the Legislative Standards Act which requires legislation to have sufficient regard to the rights and liberties of individuals, to the extent that it may result in property owners having their rates increased without an equivalent increase in services. Similarly, a local government may decide to re-levy rates and charges which may result in property owners having their rates decreased.

The amendments afford local governments the authority to revisit rates and charges levied at the annual budget meeting for the 2021-22 financial year in order to be responsive to changing economic circumstances and impacts on operations caused by the ongoing COVID-19 public health emergency.

The proposed authority is consistent with that granted to local governments for the 2020-21 financial year by way of a temporary regulation-making power and regulation, with any revised rates and charges being prospectively levied and applying only for the remainder of the 2021-22 financial year. For example, if a local government adopted its budget in July 2021, the local government could then resolve at a later point (outside

of the annual budget meeting) to re-levy rates and charges for the remainder of the 2021-22 financial year with the new rate applying no earlier than the day the resolution is made.

Further, the proposed amendments are consistent with the purposes of the COBA (section 3) and the LGA (section 3) which include providing for a system of local government that is accountable, effective, efficient, and sustainable and are not intended to amend or override the Human Rights Act, thus preserving these protections. Existing safeguards include that the Local Government Minister may revoke a decision of a local government where it is in the public interest or where that decision breaches the statutory local government principles which all local governments must adhere to.

Ultimately, any change in rates mid-year (individual impact) would be justified on the basis of ensuring the ongoing financial sustainability of local governments and their ability to continue to provide essential services to their communities as a whole, notwithstanding the uncertain economic conditions.

### Flexibility to facilitate the holding of COVID-safe local government by-elections and fresh elections

#### ***Rights and liberties***

##### *Political communication and human rights*

Under section 4(2)(a) of the Legislative Standards Act the fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals. Abrogation of established statute law rights and liberties must be justified. Legislation should not abrogate other rights, in the broadest sense of the word, from any source without sufficient justification.

The following amendments in relation to local government by-elections and fresh elections impact on the rights and liberties of individuals particularly in relation to political communication and human rights including the rights to freedom of expression, taking part in public life, freedom of movement and privacy and reputation:

- changing the cut-off dates for compiling the voters roll and nominating candidates;
- allowing the Minister, in consultation with the ECQ, to postpone the polling day by fixing a date that is more than two months after the original polling day;
- allowing the returning officer to fix a date for the taking of an adjourned poll that is not more than two months after the original polling day;
- providing for the Minister to direct that a poll be conducted by postal ballot and allowing the ECQ to declare that a stated class of electors may vote in a way approved by the ECQ where the Minister has made such a direction;
- modifying timeframes for making a postal vote request and providing for the ECQ to declare that a class of persons may cast a postal vote without applying;
- allowing the ECQ to declare by notice that electoral visitor voting is not available at the start of a by-election or fresh election and make alternative arrangements to enable an affected elector to vote; and if a declaration is not made allowing the ECQ or returning officer to direct an issuing officer not to visit an elector and ensure the issuing officer makes alternative arrangements to enable the affected elector to vote;

- allowing the ECQ to declare a class of electors who may cast an electronically assisted vote and to make procedures which potentially could impact how those electors cast electronically assisted votes;
- allowing the ECQ to issue directions in relation to the display or distribution of how-to-vote cards and other election material at a polling booth;
- allowing the ECQ to give directions to scrutineers and candidates about where they may be present and the number of scrutineers each candidate may have for a by-election or fresh election;
- allowing a returning officer or presiding officer for a polling booth or a member of the ECQ's staff who has been given a direction under section 96A of the LGEA (Recounting of votes) to give a direction about the movement of scrutineers or candidates at a relevant place, areas where they may or may not be, and the number of scrutineers allowed in particular areas; and
- enabling the returning officer to direct ECQ staff to count votes at a stated place and arrange for the counting of votes to be filmed.

The impacts are justified on the basis that public health considerations may necessitate changes to the way a by-election or fresh election is conducted to reduce the spread of COVID-19. The amendments are temporary and will only apply, if necessary, to a by-election for which a notice of election is published on or before the COVID-19 legislation expiry day or to a fresh election if a regulation that provides for the election to be held is made on or before the COVID-19 legislation expiry day.

#### *Proportionality of offences*

Further, whether legislation has sufficient regard to the rights and liberties of individuals includes whether, for example, consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation. Legislation must impose penalties which are proportionate to the offence.

The proposed amendments will include the following offences, to apply:

- when a person, with a reasonable excuse, contravenes a direction of the ECQ about how, where and when how-to-vote cards may be distributed or displayed at a polling booth for the election; prohibiting the distribution/display of how-to-vote cards and other election material at a polling booth for the election; prohibiting a person from canvassing for votes in or near polling booths; permitting the display of certain political statements. The maximum penalty that applies for this offence is 10 penalty units;
- when a person, without a reasonable excuse, contravenes a direction of the ECQ about the number of scrutineers each candidate may have at a polling booth or other place a scrutineer is entitled to be present under the LGEA or prohibiting a scrutineer or candidate from being present at a polling booth or other place where the scrutineer or candidate would otherwise be entitled to be present under the LGEA. The maximum penalty that applies for this offence is 20 penalty units; and
- when a scrutineer or candidate, without a reasonable excuse, does not comply with a direction of a returning officer, presiding officer for a polling booth or a member of the ECQ's staff who is re-counting ballot papers under section 96A of the LGEA about movement at a polling booth or other place where the scrutineer or candidate is entitled to be present under the Act. The maximum penalty that applies for this offence is 20 penalty units.

The Bill also amends the SPER to make non-compliance with the directions an offence for which a penalty infringement notice may be issued under the *State Penalties Enforcement Act 1999*.

The maximum penalties prescribed are commensurate with the penalties applying to similar offences in the LGEA, the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* and the *Electoral Act 1992*.

Penalties for these offences are significant to provide disincentive for non-compliance and in recognition of the serious public health risks involved.

### ***Institution of Parliament***

Section 4(2)(b) of the Legislative Standards Act provides that fundamental legislative principles must have sufficient regard to the institution of Parliament. Section 4(4) of the Legislative Standards Act provides that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons; and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and authorises the amendment of an Act only by another Act.

Despite Queensland's current strong position in relation to COVID-19, the COVID-19 public health emergency is still ongoing and there is the possibility of a further wave or waves of infection in the State. This may necessitate the need for alternative arrangements to be put in place for the holding and conduct of by-elections and fresh elections which can be engaged if needed.

The broad regulation-making powers included in the amendments raise a potential inconsistency with the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament. However, it is in the public interest to include a regulation-making power to enable alternative arrangements to be put in place where there are legislative impediments or gaps that would otherwise prevent a by-election or fresh election proceeding in an appropriate way depending on the prevailing circumstances around the public health risks of COVID-19.

Under the proposed amendments to the LGEA, the Minister may only recommend that the Governor in Council make the regulation if the Minister is satisfied the regulation is necessary to achieve the purpose of minimising the risks to health and safety associated with COVID-19. The amendments also include new regulation-making powers in the COBA and the LGA to facilitate the holding of a by-election or a fresh election. These powers allow for a regulation to operate retrospectively, with the limitation that the regulation cannot commence prior to the commencement day for the Bill. This raises whether the legislation has sufficient regard to the rights of the individual and the institution of Parliament to the extent that it will allow for regulations with retrospective application to be made and, for amendments to the LGEA, allowing a regulation to be inconsistent with the LGEA, the COBA and the LGA. However, the scope of these powers is limited to their respective purposes and any regulations made will be temporary. In addition, once approved by the Governor in Council, the regulations must be tabled in the Legislative Assembly and may be the subject of a disallowance motion.

Further, the amendments will allow certain legislative requirements or timeframes to be varied without further legislative amendment or a regulation being made. This raises a potential inconsistency with the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament.

The amendments will enable:

- the ECQ to vary the cut-off date for voters rolls and nominations;
- the Minister, in consultation with ECQ, to postpone the polling day by fixing a date that is longer than two months after the original polling day;
- the returning officer to fix a date for the taking of an adjourned poll that is not more than two months after the original polling day;
- the ECQ to vary the cut-off date for applications for a postal vote;
- the ECQ to declare additional classes of voters who may make an electronically assisted vote;
- the ECQ to issue directions about the display and distribution of how-to-vote cards; and
- the ECQ to issue directions relating to the number of scrutineers a candidate may have for a by-election or fresh election and the movement of scrutineers and candidates at a polling booth or other place they are entitled to be present.

These arrangements are justified on the basis that allowing such procedures to be made, and directions to be given, may be necessary depending on the prevailing circumstances at the time a by-election or fresh election is held so as to minimise risks to health and safety caused by the COVID-19 public health emergency. Further, the ECQ as an independent statutory body that conducts local government elections, in consultation with Queensland Health, is best placed to assess prevailing circumstances and manage these temporary measures. It is also appropriate to provide the Minister the ability to postpone polling day for an election for an extended period of time (longer than two months from the original polling day), as it may be necessary to coordinate and manage the Government's response to serious outbreaks of COVID-19.

#### Extension of operation of COVID-related local government meeting provisions

##### ***Rights and liberties***

Consideration of the effect of legislation on the rights and liberties of individuals often involves examining the balance between the rights of individuals and the rights of the community or more general rights (OQPC Notebook 3.15.1).

The proposed amendments to the CBR and the LGR to extend existing additional temporary local government and committee meeting provisions enable the chairperson of a local government or committee meeting to restrict access to a meeting if they are satisfied it is in the public interest to restrict access in order to minimise serious risks to the health and safety of persons caused by COVID-19. The measure is temporary in nature and is consistent with the Queensland and Commonwealth Governments' measures to promote social distancing and discourage gatherings of people to help contain COVID-19.

While the amendments restrict an individual's ability to observe or listen to discussions and decisions that would otherwise be conducted in an open meeting, the potential breach is justified on the basis of lessening public health risks during the ongoing COVID-19 public health emergency.

## Consultation

### Extension of operation of COVID-19 related legislation

Targeted consultation was undertaken with key stakeholders on the policy proposal to further extend the expiry of the COVID-19 related legislation.

Stakeholders consulted included: heads of court jurisdiction and the Queensland Civil and Administrative Tribunal, Queensland Law Society, Bar Association of Queensland, Real Estate Institute of Queensland, Women's Legal Service, Aboriginal and Torres Strait Islander Women's Legal Service, Unit Owners Association of Queensland, Owners Corporation Network, Australian College of Strata Lawyers, Strata Community Australia (Qld), Australian Resident Accommodation Managers Association, Clubs Queensland, Queensland Hotels Association, RSL & Services Clubs Association Queensland Inc, Foundation for Alcohol Research and Education, Restaurant and Catering Australia, Tabcorp Holdings Limited, The Star Entertainment Group, The Ville Resort – Casino, The Reef Hotel Casino, Director of Public Prosecutions, Queensland Human Rights Commission, Legal Aid Queensland, Crime and Corruption Commission, Public Trustee, Public Guardian, Public Advocate, Electoral Commission Queensland, Queensland Family and Child Commission, Queensland College of Teachers, Family Responsibilities Commission, Office of the Independent Assessor and Small Business Commissioner.

### Local government amendments

The Local Government Association of Queensland (LGAQ) and Local Government Managers Australia, Queensland (LGMA Queensland) were provided with an overview of all the proposed local government portfolio amendments.

ECQ was consulted during the preparation of the proposed amendments for local government by-elections and fresh elections.

## Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another state.

However, in developing the Bill, consideration has been given to legislative responses to the COVID-19 emergency in other jurisdictions; and measures that have been taken by other jurisdictions to extend their legislative response beyond their initial expiry date. This includes: *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020* (Vic); the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW); the *COVID-19 Response and Economic Recovery Omnibus Act 2020* (WA); *COVID-19 Emergency Response Act 2020* (SA); the *COVID-*

*19 Disease Emergency (Miscellaneous Provisions) Act 2020 (Tas); and the COVID-19 Emergency Response Act 2020 (ACT).*

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that, when enacted, the Act will be cited as the *COVID-19 Emergency Response and Other Legislation Amendment Act 2021*.

### Part 2 Amendment of Body Corporate and Community Management Act 1997

*Clause 2* provides that this part amends the *Body Corporate and Community Management Act 1997*.

*Clause 3* amends the note to section 323D(4) (Sinking fund budgets) to update the reference to the *Body Corporate and Community Management (Standard Module) Regulation 2008* to the current *Body Corporate and Community Management (Standard Module) Regulation 2020*.

*Clause 4* amends the example to section 323F(1)(b) (Penalties for late payment) to replace 1 June 2021 with 1 November 2021.

*Clause 5* amends section 323H(4)(a) (Power to borrow) to update the reference to the *Body Corporate and Community Management (Standard Module) Regulation 2008* to the current *Body Corporate and Community Management (Standard Module) Regulation 2020*.

### Part 3 Amendment of City of Brisbane Act 2010

*Clause 6* provides that this part amends the *City of Brisbane Act 2010* (COBA).

*Clause 7* inserts new section 96B (Additional decisions about levying of rates and charges for 2021-2022 financial year) which provides that Brisbane City Council may decide, by resolution made other than at the council budget meeting for the 2021-2022 financial year, what rates and charges are to be levied for a relevant part of that financial year. Such a decision is an ‘extraordinary decision’ and a ‘relevant part’ of that financial year is a period starting on a day not earlier than the day the resolution is made and ending on 30 June 2022.

Furthermore, the section requires Brisbane City Council’s 2021-2022 annual budget to be amended to take account of the extraordinary decision and for any amended annual budget to be adopted. However, if the amended budget does not comply with the requirements prescribed by regulation for preparing an annual budget or is not consistent with the council’s extraordinary decision, it is of no effect.

New section 96B(1) does not limit section 96(2) of the COBA which provides that Brisbane City Council must decide, by resolution at the council budget meeting for a financial year, what rates and charges are to be levied for that financial year.

Any previous ‘relevant decision’ made by Brisbane City Council, to the extent it is inconsistent with the extraordinary decision, ceases to have effect in relation to the relevant part of the 2021-2022 financial year. The definition of ‘relevant decision’ means a decision made under section 96(2) of the COBA or an extraordinary decision.

New section 96B expires on 30 June 2022.

*Clause 8* inserts new chapter 7, part 5B (Provisions for other elections affected by COVID-19 public health emergency) into the COBA.

New section 240C (Minister may give directions about filling vacancies in office of councillors) provides that if the office of a councillor (including the mayor) becomes vacant before the COVID-19 legislation expiry day, the following applies:

- section 163(2), (3) and (6), which provides for the filling of a councillor’s office if the office becomes vacant in certain circumstances, does not apply in relation to the vacant office;
- the Minister may give a direction to the Brisbane City Council about whether or not the vacant office of a councillor must be filled;
- if the vacant office must be filled, the Minister may, by notice to the council, extend the period within which the council must fill the vacant office under section 163(4);
- the Minister may act under this section only if the Minister is satisfied, after consulting the Electoral Commission Queensland (ECQ) and having regard to the purpose of part 9B of the *Local Government Electoral Act 2011*, it is in the public interest to do so;
- if the Minister extends the period under section 163(4) to fill a vacant office, the Governor in Council may appoint a qualified person under section 163(5) to fill the vacant office only if the council has not filled the vacancy within the extended period.

New section 240D (Regulation-making power for elections affected by COVID-19 public health emergency) provides a regulation may make provision about a matter if the COBA does not make provision or sufficient provision about the matter in relation to an election to which part 9B of the LGEA applies. The regulation may have retrospective operation but only from the day of commencement of this section.

New chapter 7, part 5B and any regulation made under new section 240D expire on the COVID-19 legislation expiry day.

## **Part 4 Amendment of City of Brisbane Regulation 2012**

*Clause 9* provides that this part amends the *City of Brisbane Regulation 2012* (CBR).

*Clause 10* amends section 255G of the CBR by replacing ‘30 June 2021’ with ‘the COVID-19 legislation expiry day’. This will extend the operation of the additional council and committee meeting provisions (chapter 8, part 2A) still required to respond to the COVID-19 public health emergency.

## **Part 5 Amendment of COVID-19 Emergency Response Act 2020**

*Clause 11* provides that this part amends the *COVID-19 Emergency Response Act 2020*.

*Clause 12* amends section 4A(a) (Meaning of *COVID-19 legislation expiry day*) to replace 30 April 2021 with 30 September 2021 providing that ‘COVID-19 legislation expiry day’ means the earlier of 30 September 2021 or another day prescribed by regulation as the COVID-19 legislation expiry day.

*Clause 13* amends section 25 (Transitional regulation-making power).

Subsection (1) provides that an affected law includes a power to make the transitional regulation.

Subsection (2) provides that a transitional regulation must declare it is a transitional regulation and declare it is made under section 25 or made under an affected law as modified by section 25(4).

## **Part 6 Amendment of Economic Development (COVID-19 Emergency Response) Regulation 2020**

*Clause 14* provides that this part amends the *Economic Development (COVID-19 Emergency Response) Regulation 2020*.

*Clause 15* amends section 6(2)(b)(ii) (Publicly notifying applications if no local newspaper) to replace 30 June 2021 with 30 September 2021.

## **Part 7 Amendment of Environment Protection Act 1994**

*Clause 16* provides that this part amends the *Environmental Protection Act 1994*.

*Clause 17* amends section 547D(2)(b)(ii) (Form and content) to replace 30 June 2021 with 30 November 2021.

*Clause 18* amends section 547I(3)(a)(ii) (Making of declaration) to replace 30 June 2021 with 30 November 2021.

## **Part 8 Amendment of Gaming Machine Act 1991**

*Clause 19* provides that this part amends the *Gaming Machine Act 1991*.

*Clause 20* amends section 367C (Deferral or waiver of payment of gaming taxes) to replace 30 June 2021 with 30 September 2021.

## **Part 9 Amendment of Justice Legislation (COVID-19 Emergency Response – Proceedings and Other Matters) Regulation 2020**

*Clause 21* provides that this part amends the *Justice Legislation (COVID-19 Emergency Response – Proceedings and Other Matters) Regulation 2020*.

*Clause 22* omits the modifications to the *Coroners Act 2003* in Part 2, division 1.

## **Part 10 Amendment of Local Government Act 2009**

*Clause 23* provides that this part amends the *Local Government Act 2009* (LGA).

*Clause 24* inserts new section 94B (Additional decisions about levying of rates and charges for 2021-2022 financial year) which provides that a local government under the LGA may decide, by resolution made other than at the budget meeting for the 2021-2022 financial year, what rates and charges are to be levied for a relevant part of that financial year. Such a decision is an ‘extraordinary decision’ and a ‘relevant part’ of that financial year is a period starting on a day not earlier than the day the resolution is made and ending on 30 June 2022.

Furthermore, the section requires the local government’s 2021-2022 annual budget to be amended to take account of the extraordinary decision and for any amended annual budget to be adopted. However, if the amended budget does not comply with the requirements prescribed by regulation for preparing an annual budget or is not consistent with the local government’s extraordinary decision, it is of no effect.

New section 94B(1) does not limit section 94(2) of the LGA which provides that a local government must decide, by resolution at the local government’s budget meeting for a financial year, what rates and charges are to be levied for that financial year.

Any previous ‘relevant decision’ made by the local government, to the extent it is inconsistent with the extraordinary decision, ceases to have effect in relation to the relevant part of the 2021-2022 financial year. The definition of ‘relevant decision’ means a decision made under section 94(2) of the LGA or an extraordinary decision.

New section 94B expires on 30 June 2022.

*Clause 25* inserts new chapter 7, part 5B (Provisions for other elections affected by COVID-19 public health emergency) into the LGA.

New section 260AC (Minister may give directions about filling vacancies in office of councillors) provides that if the office of a councillor (including the mayor) becomes vacant before the COVID-19 legislation expiry day, the following applies:

- section 163(2), (2A) and (5), which provides for the filling of a councillor’s office if the office becomes vacant in certain circumstances, does not apply to the local government;
- the Minister may give a direction to the local government about whether or not the vacant office of a councillor must be filled;
- if the vacant office must be filled, the Minister may, by notice to the local government, extend the period within which the local government must fill the vacant office under section 163(3);
- the Minister may act under this section only if the Minister is satisfied, after consulting the Electoral Commission Queensland (ECQ) and having regard to the purpose of part 9B of the *Local Government Electoral Act 2011*, it is in the public interest to do so;

- if the Minister extends the period under section subsection (4) to fill a vacant office, the Governor in Council may appoint a qualified person under section 163(4) to fill the vacant office only if the local government has not filled the vacancy within the extended period.

New section 260AD (Regulation-making power for elections affected by COVID-19 public health emergency) provides a regulation may make provision about a matter if the LGA does not make provision or sufficient provision about the matter in relation to an election to which part 9B of the LGEA applies. The regulation may have retrospective operation but only from the day of commencement of this section.

New chapter 7, part 5B and any regulation made under new section 260AD expire on the COVID-19 legislation expiry day.

## **Part 11 Amendment of Local Government Electoral Act 2011**

*Clause 26* provides that this part amends the *Local Government Electoral Act 2011* (LGEA).

*Clause 27* makes minor amendments to section 18 (When voters roll must be compiled) to replace the references to publication in a newspaper with publication on the ECQ's website, as the time requirement for compiling a voters roll is contingent on the publication of the notice for an election on the ECQ's website under sections 24(3) and 25(1).

*Clause 28* inserts new part 9B (Provisions for elections affected by COVID-19 public health emergency) into the LGEA.

New section 200M (Purpose of part) provides that the purpose of part 9B is to facilitate the holding of a by-election or fresh election to which part 9B applies in a timely way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

New section 200N (Application of part) provides that part 9B applies to a by-election if a notice of the day of the by-election is published on the ECQ's website under section 24(3) on or before the COVID-19 legislation expiry day; or to a fresh election if a regulation that provides for the election to be held is made on or before the COVID-19 legislation expiry day. Part 9B applies despite any other provisions of the LGEA about the holding of a by-election or fresh election.

New section 200O (References to provisions of pt 4 in relation to fresh election) provides that a reference to a provision of part 4 in relation to a fresh election is a reference to the provision as applied to the fresh election under section 105(3).

New section 200P (Time limit for compiling voters roll) provides that the ECQ may, by notice, fix a day by which a voters roll for a by-election or fresh election must be compiled that is not during the period provided for under section 18(1) or (3). However, the ECQ may fix a day under this section only if satisfied that, having regard to the purpose of part 9B, it would be in the public interest to do so. The ECQ must ensure the notice is published on its website and in other ways it considers appropriate.

This section does not limit section 18(2) in relation to a fresh election, which allows a regulation to fix a different day for compiling a voters roll.

New section 200Q (Time limit for nomination of candidates) provides that the ECQ may, by notice, fix a day as the nomination day for a by-election or fresh election that is not a day provided for under section 25(2)(a). However, the ECQ may fix a day under this section only if satisfied that, having regard to the purpose of part 9B, it would be in the public interest to do so. The ECQ must ensure the notice is published on its website and in other ways it considers appropriate.

New section 200R (Adjournment of poll under s 52A or 53) provides that if a poll is adjourned under section 52A(3) or section 53(1), a returning officer may adjourn a poll for more than 34 days after the day on which the poll is adjourned but not more than 2 months after the polling day stated in the notice under section 35 (original polling day) for a by-election or fresh election. The adjourned day must also be the earliest Saturday on which the returning officer is satisfied that the poll may be practicably and safely be taken or resumed. A returning officer or presiding officer may continue to act under section 53, and the returning officer may act under this section, as the occasion requires.

The section clarifies that it applies despite section 24(2) and, for the LGEA, a reference to the polling day for an election includes a reference to the polling day for the election in a notice published by the ECQ under this section.

New section 200S (Postponing polling day) allows the Minister to postpone a polling day for more than 2 months after the original polling day for a by-election or fresh election. However, the Minister must first be satisfied, after consulting the ECQ and having regard to the purpose of part 9B, it would not be in the public interest for the election to be held during the period of 2 months after the original polling day. The postponed polling day must also be on the earliest Saturday on which the Minister is satisfied that the poll may be practicably and safely be taken or resumed.

The Minister must also give the ECQ a written notice of the postponed polling day and the ECQ must, as soon as practicable after receiving the notice, publish a notice about the postponement of the polling day on its website.

The section clarifies that the postponed polling day for a by-election may be later than the day provided for section 24(2) and, for the LGEA, a reference to the polling day for an election includes a reference to the polling day for the election in a notice published by the ECQ under this section.

New section 200T (Conduct of poll by postal ballot) provides that the Minister may direct that a poll to be conducted by a postal ballot, if the Minister is satisfied that having regard to the purpose of part 9A it would be in the public interest to do so for a fresh election or by-election. For an election for a division for a local government area, the postal ballot may be for all or part of the division; or for an election for all of a local government's area, the postal ballot may be for of the area, or 1 or more divisions of the area, or another parts of the area.

However, the Minister must consult with the electoral commission before giving the direction. The Minister's direction must be published on the ECQ's website and a direction that relates to a part of a local government area must be accompanied by a map showing the part of the area. The local government must ensure the public may inspect the map at the local government's public office and on its website.

If the Minister gives a direction about conducting a poll by postal ballot the ECQ may declare, by notice published its website, that electors of a stated class may vote in the election other than by postal vote.

New section 200U (Time limit for applying to cast postal vote in election) modifies the application of section 79 and section 81 by allowing the ECQ to publish a notice on its website to fix a time and day, that may be earlier or later than the time and day required in section 79(2)(d) or section 81(2)(a), by which an elector may apply to cast a postal vote. However, the day and time must be before the polling day.

New section 200V (Declaration about electors casting postal vote without application) allows the ECQ to declare, by notice on its website, that a class of persons may cast a postal vote without applying under section 79, for a by-election or fresh election. If the ECQ makes the declaration, the returning officer must follow the requirements in subsections 79(4) to (7) to enable a person to cast a postal vote, keep a record of ballot papers and declaration envelopes posted. This section will not limit the ways that an elector may otherwise cast a vote.

New section 200W (Declaration that electoral visitor voting not available for election) applies if the notice of the election for a by-election or fresh election has not been published under section 25 and the ECQ is satisfied that it would pose a risk to the health and safety of an issuing officer to visit electors under section 77. The ECQ may declare that electors will not be visited under section 77 for the election, by including the declaration in the notice of the election. The ECQ may also publish the notice of the declaration in other ways it considers appropriate. The ECQ must also make alternative arrangements to enable an elector affected by the direction to vote in the by-election or fresh election. If a declaration is made under this section for a by-election or fresh election, section 77 does not apply to the election.

New section 200X (Declaration about electoral visitor voting) applies if a declaration has not been made under section 200W for the election notice and the ECQ is satisfied that it would pose a risk to the health and safety of an issuing officer to visit electors, including electors who has requested to vote as an electoral visitor voter, electors in the by-election or fresh election, or electors of a particular class. The ECQ or returning officer may direct an issuing officer not to visit an elector, however, the ECQ or the returning officer must ensure the issuing officer makes alternative arrangements to enable an elector affected by the direction to vote in the by-election or fresh election. Section 77 applies to the issuing officer subject to the direction.

New section 200Y (Electronically assisted voting) allows the ECQ to declare a class of electors to be able to make an electronically assisted vote in a by-election or fresh election, if the ECQ is satisfied that having regard to the purpose of part 9B, it would be in the public interest to make the declaration. The section also allows the ECQ to make procedures for electronically assisted voting for the by-election or fresh election

and for these procedures to take effect when published on the ECQ's website or any later day stated in the procedures. If there is an inconsistency between the procedures made under this section and procedures made under section 75A, the procedures under this section prevail.

New section 200Z (Distribution or display of how-to-vote cards or other election material) allows the ECQ to give a direction about the display; or distribution of how-to-vote cards and election material; or prohibiting a person from canvassing for votes in; or near a polling booth or permitting the display of political statements at a place mentioned in section 188(1), if the ECQ is satisfied that, having regard to the purposes of the part, it would be in the public interest to regulate, limit or prohibit the distribution of how-to-vote cards or other election material or canvassing for votes in or near a polling booth. The direction must be published on the ECQ's website. It is an offence with a maximum penalty of 10 penalty units to contravene a direction under the section, unless the person has a reasonable excuse.

New section 200ZA (Directions about candidates or scrutineers at particular places) allows the ECQ to give a direction for a by-election or fresh election about the number of scrutineers each candidate may have at a polling booth; or other place at which a scrutineer is entitled to be present under the LGEA; or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the LGEA. However, the direction may only be given if the relevant person is satisfied that, having regard to the purpose of part 9B, it would be in the public interest to do so. The direction must be published on the ECQ's website. It is an offence with a maximum penalty of 20 penalty units to contravene a direction under the section, unless a candidate or scrutineer has a reasonable excuse.

New section 200ZB (Direction about movement of candidates or scrutineers) allows the returning officer, a presiding officer for a polling booth, or a member of the ECQ's staff who has been given a direction under section 96A (each an official), for a by-election or fresh election, to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be. However, the direction may only be given if the official is satisfied that, having regard to the purpose of part 9B, it would be in the public interest to do so. It is an offence with a maximum penalty of 20 penalty units to contravene a direction under the section, unless a candidate or scrutineer has a reasonable excuse. However, a candidate or scrutineer does not commit an offence, unless the official giving the direction has warned them that it is an offence not to comply with the direction unless they have a reasonable excuse.

New section 200ZC (Counting of votes) provides that the returning officer may direct a member of the ECQ's staff to carry out the counting of votes at a stated place. The section further provides that the returning officer may arrange for the counting of votes to be filmed by a member of the ECQ's staff.

New section 200ZD (Restriction on directions) provides that an official must not give a direction under this part of a kind prescribed under section 200ZE(b) as a kind of direction that may not be given under the provision or in circumstances prescribed under section 200ZE(b) as circumstances in which a direction may not be given.

New section 200ZE (Regulation about election) allows a regulation to make provision about a matter to facilitate the holding of a by-election or fresh election in a timely way that helps minimise serious risks to the health and safety of persons caused by the COVID-19 public health emergency.

New section 200ZF (Matters about regulation under this part) applies to regulations made under part 9B and provides that a regulation may create an offence with a penalty of up to 20 penalty units; operate retrospectively to a day not earlier than the commencement (other than creating an offence); and may be inconsistent with the LGEA, *City of Brisbane Act 2010* and *Local Government Act 2009* including, for example, by modifying the application of part 4 of the LGEA in relation to a by-election or fresh election, to the extent necessary to achieve the purpose of this part. However, the Minister may recommend the making of the regulation only if satisfied the regulation is necessary to achieve the purpose of part 9B. The Minister must also consult with the ECQ before recommending to the Governor in Council the making of a regulation. If a regulation is made, it must declare that it is made under part 9B.

New section 200ZG (Expiry) provides that part 9B, and any regulation made under it, expire on the COVID-19 legislation expiry day.

*Clause 29* inserts new part 11, division 5 (Transitional provision for COVID-19 Emergency Response and Other Legislation Amendment Act 2021) into the LGEA.

New section 220 (Application of pt 9B to election) provides that part 9B applies to by-elections and fresh elections mentioned in section 200N, for which the notice of a by-election was published before or after the commencement; and where the regulation requiring a fresh election to be held was made before or after the commencement.

New section 220 also provides that if immediately before the expiry of part 9B, anything required or permitted to be done under the LGEA in relation to an election mentioned in section 220N has not been done, expired part 9B continues to apply for the election as if the expired part continued in effect.

## **Part 12 Amendment of Local Government Regulation 2012**

*Clause 30* provides that this part amends the *Local Government Regulation 2012* (LGR).

*Clause 31* amends section 277F of the LGR by replacing '30 June 2021' with 'the COVID-19 legislation expiry day'. This will extend the operation of the additional local government and committee meeting provisions (chapter 8, part 2, division 4) still required to respond to the COVID-19 public health emergency.

## **Part 13 Amendment of State Penalties Enforcement Regulation 2014**

*Clause 32* provides that this part amends the *State Penalties Enforcement Regulation 2014*.

*Clause 33* amends schedule 1 (Infringement notice offences and fines for nominated laws) to prescribe the following as infringement notice offences and the respective penalty amount:

- section 200Z(4) (Distribution or display of how-to-vote cards or other election material) – 1 penalty unit;
- section 200ZA(4) (Directions about candidates or scrutineers at particular places) – 2 penalty units; and
- section 200ZB(4) (Direction about movement of candidates or scrutineers) – 2 penalty units.